

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PETER A. MAULE,

Appellant,

v.

DEPARTMENT OF ECOLOGY,

Respondent.

) Case No. DISM-98-0034

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, HOWARD N. JORGENSEN, Chair; WALTER T. HUBBARD, Vice Chair; and NATHAN S. FORD Jr., Member. The hearing was held at the Department of Labor and Industries, Tukwila Regional Office, 12806 Gateway Drive, Seattle, Washington, on March 3 and 4, 1999.

1.2 **Appearances.** Appellant Peter A. Maule was present and was represented by Cinnamon Stephens, Attorney at Law, of the Stephens Law Firm. Respondent Department of Ecology was represented by Ann F. MacMurray, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct, and willful violation of published employing agency or Department of Personnel rules and regulations, including the agency's policies on Providing a Secure Workplace and Preventing Sexual Harassment. Respondent alleges that Appellant subjected five female coworkers to unwanted touching and kissing and exhibited inappropriate displays of anger.

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2 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
3 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.
4 School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services,
5 PAB No. D93-053 (1994); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992);
6 Schonauer v. DCR Entertainment, 79 Wn. App. 808 (1995), *review denied*, 129 Wn. 2d 1014
7 (1996); Maruca v. Dep't of Labor and Industries, PAB No. D94-009 (1995), *appeal filed* Thurston
8 Co. Super. Ct. No. 95-2-03873-2.

9 10 **II. FINDINGS OF FACT**

11 2.1 Appellant Peter A. Maule was an Environment Specialist 3 and a permanent employee for
12 Respondent Department of Ecology. Appellant and Respondent are subject to Chapters 41.06 and
13 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a
14 timely appeal with the Personnel Appeals Board on June 29, 1998.

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16 2.2 By letter dated June 12, 1998, Dan Silver, Deputy Director, informed Appellant of his
17 dismissal effective June 29, 1998. The letter charged Appellant with neglect of duty, gross
18 misconduct and violation of the agency's policies. The disciplinary letter outlined numerous
19 incidents involving five female employees who alleged that Appellant sexually harassed and
20 created an intimidating work environment for them.

21
22 2.3 Appellant began his employment with the state of Washington in 1987. As an Environment
23 Specialist 3 with the Department of Ecology, Appellant worked in the Northwest Regional Office in
24 the Toxics Cleanup Unit.

25 26 ***Incident involving Susan Lee***

1 2.4 Susan Lee is a Public Involvement Specialist and has known Appellant since she became
2 employed with the department in 1991. In early January 1998, Ms. Lee was standing in a hallway
3 at work when Appellant approached her and kissed her on the cheek. Because Appellant had kissed
4 Ms. Lee on the cheek one previous time, Ms. Lee told Appellant that it was not appropriate to kiss
5 her at work and told him not to do it again. Appellant initially walked away, but immediately
6 returned to where Ms. Lee was standing. Appellant attempted to vocalize something, but it was not
7 clear to Ms. Lee what Appellant was saying. Appellant's face was red and he appeared angry.
8 Because this was the first time Ms. Lee had set a boundary with Appellant, she became concerned
9 and frightened with his response. Although Ms. Lee and her husband had a social relationship with
10 Appellant and his wife, she did not believe that Appellant's kiss at work was appropriate.
11

12
13 2.5 Ms. Lee discussed the incident with a coworker, Gail Colburn, who encouraged her to tell
14 their supervisor, Mike Gallagher. Ms. Lee did discuss the issue with Mr. Gallagher.
15

16 2.6 Gail Colburn works in the Toxics Cleanup Unit. Several weeks following her conversation
17 with Susan Lee about Appellant's behavior, Ms. Colburn spoke to Mr. Gallagher. Ms. Colburn
18 subsequently drafted a memo entitled, "Complaint Package regarding Peter Maule." The memo,
19 dated March 2, 1998, was submitted to Ecology's affirmative action officer and outlined Ms. Lee's
20 experience with Appellant. Ms. Colburn also outlined her own experiences with Appellant that
21 caused her fear and concern.
22

23
24 2.7 As other employees in the unit became aware that a complaint was going to be filed against
25 Appellant, they began to share their experiences regarding Appellant and his behavior toward them.
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1 The complainants, in addition to Susan Lee and Gail Colburn, included Carla Skog, Louise Bardy
2 and Karen Klocke.

3
4 2.8 Upon learning of the employees' concerns, Mike Gallagher, Section Manager, along with
5 staff in the Employee Services Department, conducted a preliminary investigation and concluded
6 that Appellant should be administratively reassigned to his home pending further investigation.

7
8 2.9 By memo dated March 5, 1998, from "Concerned Co-workers," to the agency's affirmative
9 action officer, a formal complaint was filed against Appellant. The memo, entitled "Sexual
10 Harassment and Hostile Work Environment Complaints" alleged that Appellant sexually harassed
11 and created a hostile work environment and described Appellant's behavior as "acts which include
12 yelling at women employees, demonstrating rage when correction is given, and an apparent lack of
13 self control . . ." (Exh. A-1).

14
15 ***Incidents involving Gail Colburn***

16
17 2.10 Ms. Colburn described numerous instances in which Appellant's behavior toward her made
18 her feel uncomfortable or afraid. In an incident in August 1997, Appellant commented to Ms.
19 Colburn, "You look nice. Are you wearing that for me?" in reference to her attire. On September
20 17, 1997, Appellant called Ms. Colburn at her new residence and began to ask her questions about
21 her reasons for moving. Ms. Colburn's answers were evasive and she asked Appellant why he was
22 calling her. Appellant then began asking her questions about a volunteer activity in which the unit
23 was participating. Ms. Colburn was extremely concerned about the personal nature of Appellant's
24 phone call and his interest in where she lived.

1 2.11 In February 1998, Ms. Colburn and Appellant passed each other in a hallway going opposite
2 directions. As they passed each other, Appellant again began asking Ms. Colburn questions about
3 where she lived. Ms. Colburn's responses were vague and Appellant's questions and voice became
4 louder and insistent as she continued to walk away.

5
6 2.12 In each of the incidences with Appellant, Ms. Colburn described Appellant's demeanor as
7 aggressive, insistent and threatening. Ms. Colburn also began to notice that Appellant, whose work
8 cubicle adjoined hers, would peek into her work area and then back away, giving her the feeling
9 that he was "watching" her.
10

11
12 2.13 As a result of Appellant's behavior, Ms. Colburn's fear of Appellant began to escalate and
13 she began to take measures to avoid interacting with him. Ms. Colburn, who frequently worked
14 late, notified her supervisor that she would not work alone with Appellant. In addition, Ms.
15 Colburn rearranged her cubicle's entry so that it was no longer in close proximity to the entry into
16 Appellant's cubicle.
17

18 ***Incident involving Carla Skog***
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20 2.14 In January 1998, Carla Skog was working in the Toxics Cleanup Unit when Appellant
21 entered her cubicle, approached her and touched her arm, hand and shoulder. Ms. Skog felt
22 uncomfortable with his actions and on January 6, 1998, she sent him an e-mail advising him that
23 she felt "very uncomfortable" when he touched her arm, hand and shoulder. Ms. Skog advised
24 Appellant that he should not repeat that type of behavior with her. (Testimony of Carla Skog and
25 Exh. R-3, p. 11-1-69).
26

1 ***Incidents involving Louise Bardy***

2 2.15 Louise Bardy also worked in the Toxics Cleanup Unit. In November 1996, Appellant
3 entered Ms. Bardy's cubicle, knelt down and commented, "I think you're beautiful, and I appreciate
4 your smile." Ms. Bardy asked Appellant why he would make such a personal comment, but
5 Appellant left her area without responding. She contacted Ms. Colburn, and they spoke to
6 Appellant's supervisor, Mike Gallagher, about this incident.
7

8 2.16 Ms. Bardy was uneasy with Appellant's comment because of a previous interaction that she
9 had with him in 1990. In that incident, Appellant entered Ms. Bardy's office unannounced, shut the
10 door and confronted her about her refusal to go on an inspection with him. Appellant was angry,
11 shaking and pointing his finger in Ms. Bardy's face. Appellant's demeanor was threatening and at
12 one point he pounded his fist on a table. Ms. Bardy became scared and reported the incident.
13 Appellant, Ms. Bardy, Ms. Colburn and Mr. Gallagher subsequently met, discussed the incident and
14 Appellant apologized. Ms. Bardy believed that she and Appellant had established a "truce" and
15 although they continued to work in the same unit, their interactions were brief and work related
16 until the November 1996 incident.
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20 2.17 In January 1998, Ms. Bardy noticed as she walked down a hall that Appellant was glaring at
21 her and appeared to be "hostile" toward her.
22

23 ***Incidents involving Karen Klocke***

24 2.18 Karen Klocke, an Environmental Report Tracker, worked in a different unit than Appellant,
25 but her duties required her to interact with him. In October 1996, Ms. Klocke entered Appellant's
26 cubicle to deliver some work documents. Ms. Klocke mentioned to Appellant that she had recently

1 received a promotion into Appellant's unit. Ms. Klocke was taken aback when Appellant "jumped
2 up" and "kissed [her] on the lips." Ms. Klocke had not expected this type of a reaction from
3 Appellant and she described it as "not welcome." Ms. Klocke pushed Appellant away and left the
4 area.

5
6 2.19 Ms. Klocke did not report the incident because she did not want to be labeled in her new
7 work unit as a "tattle tale." She also feared telling her new supervisor anything negative about
8 Appellant because Appellant was a long-term employee.

9
10
11 2.20 Ms. Klocke, who previously had a friendly relationship with Appellant as a result of
12 common interests, began to avoid Appellant and interacted with him on a professional level only.

13
14 2.21 In the Spring of 1997, Appellant entered Ms. Klocke's cubicle unannounced and "threw a
15 fit" about her attendance at a conference. Ms. Klocke observed that Appellant appeared irate, red-
16 faced and was shaking his fist. Appellant angrily advised Ms. Klocke that she had attended an
17 illegal activity by going to an Interagency Committee for State Employed Women (ICSEW)
18 conference.

19
20
21 2.22 Following this incident, Ms. Klocke rearranged her work area and cubicle so that she would
22 face the opening of her cubicle rather than have her back to it. Ms. Klocke wanted to prevent
23 Appellant from approaching her unannounced. Because of Appellant's behavior toward her, Ms.
24 Klocke did not feel safe at work. Ms. Klocke rearranged her work schedule to reduce her chances
25 of interacting with Appellant at work.
26

1
2 2.23 Appellant has strong beliefs about male-gender discrimination. During his tenure with
3 Ecology, Appellant wrote numerous vehement e-mail messages on the subject of gender inequality,
4 specifically that men were being discriminated against. Appellant believed that the agency
5 supported and encouraged a number of events organized exclusively for women, but that such
6 forums did not exist for men. Appellant found it “demeaning and frustrating” that female
7 employees of the agency were allowed to “propagate their gender biased information” regarding
8 their perspectives on gender issues using the agency’s e-mail system but men could not do the
9 same. Appellant’s e-mails, which he distributed to staff in the Northwest Regional Office, voiced
10 his opinion of the unfair treatment of males. The tone of Appellant’s e-mails were perceived by
11 staff, including Ms. Lee, Ms. Colburn, Ms. Skog, Ms. Bardy and Ms. Klocke, as angry, disturbing,
12 and inflammatory.

13
14
15 2.24 At the request of management, an independent investigator was hired to conduct the
16 investigation into the complainants allegations. Following interviews with Appellant, the
17 complainants, and other witnesses, the information was forwarded to the appointing authority.

18
19 2.25 Prior to making a determination of misconduct against Appellant, Dan Silver, the appointing
20 authority, reviewed the investigative report. While there were areas of the report that were
21 ambiguous, Mr. Silver determined that the complainants were being truthful in their accounts of
22 Appellant’s behavior toward them. Mr. Silver concluded that Appellant had demonstrated a pattern
23 of behavior toward women which included unwanted touching and kissing, inappropriate remarks
24 and unacceptable displays of anger.
25
26

1 2.26 Mr. Silver was concerned that a number of his female employees were afraid to go to work
2 because of the climate of fear created by Appellant. Because Appellant's supervisor had previously
3 counseled Appellant on his inappropriate behavior in the workplace and because Appellant's
4 actions created an intimidating and hostile work environment, Mr. Silver concluded that dismissal
5 was the appropriate sanction. Ms. Silver further believed that Appellant's pattern of behavior
6 infringed on the rights of others to work in a safe and secure environment.

7
8
9 2.27 Respondent has published policies which prohibit sexual harassment and ensure that the
10 department provides a safe and secure work environment for all its employees (Exh. R-3, Att. 2 and
11 3).

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant subjected numerous women to unwanted touching and kissing, that he unleashed verbal tirades and exhibited inappropriate displays of anger. Respondent argues that Appellant's behavior negatively impacted his coworkers, created a hostile work environment, and negatively impacted the employer's ability to provide a safe and secure work environment for its employees. Respondent argues that Appellant's actions constituted a neglect of his duty to treat his coworkers with respect, violated the agency's policies prohibiting sexual harassment and required the agency to ensure a safe and secure work environment for its employees, and rose to the level of gross misconduct. Respondent argues that the sanction of dismissal is the appropriate level of discipline.

3.2 Appellant argues that the investigation into these allegations was hasty and superficial and failed to bring forth substantive information and evidence to verify the truth. Appellant asserts that he was not given sufficient information during the investigation to defend himself and that he had no opportunity to respond to the allegations. Appellant contends that he pointed to numerous contradictions in the allegations made by the employees but that the investigator ignored them.

Regarding Ms. Lee, Appellant admits that he kissed her on the cheek, but he felt it was appropriate based on the history of their friendship and the closeness of their relationship. Regarding Ms. Colburn, Appellant acknowledges that he called her at her home to discuss a work related issue which he felt needed clarification. He states that he called her despite the fact that he felt uncomfortable doing so, but because he had called her at home in the past regarding work issues he felt it was appropriate. Regarding Ms. Skog, Appellant argues that once Ms. Skog advised him not to repeat his actions, he complied with her wishes and felt the matter was concluded. Regarding Ms. Bardy, Appellant denies complimenting her because he had a long history of fearing her due to their previous interaction. Regarding Ms. Klocke, Appellant denies kissing her and states he never

1 questioned her about her attendance at the ISECW conference because he avoided conversations
2 with Ms. Klocke.

3
4 Appellant argues that the charges are not substantiated by the clear and reputable evidence and asks
5 that his appeal be granted.

6 7 IV. CONCLUSIONS OF LAW

8 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
9 herein.

10
11 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
12 the charges upon which the action was initiated by proving by a preponderance of the credible
13 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
14 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
15 Corrections, PAB No. D82-084 (1983).

16
17 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
18 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
19 of Social & Health Services, PAB No. D86-119 (1987).

20
21 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
22 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

23
24 4.5 Willful violation of published employing agency or institution or Personnel Resources
25 Board rules or regulations is established by facts showing the existence and publication of the rules
26

1 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
2 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

3
4 4.6 Conduct is unwelcome if the employee does not solicit or incite it, and regards it as
5 undesirable or offensive. Schonauer v. DCR Entertainment, 79 Wn. App. 808 (1995), *review*
6 *denied*, 129 Wn. 2d 1014 (1996). In this case, it is clear that Appellant's conduct was unwelcome,
7 unsolicited and undesirable.

8
9 4.7 As in Maruca v. Dep't of Labor and Industries, PAB No. D94-009 (1995), *appeal filed*
10 Thurston Co. Super. Ct. No. 95-2-03873-2, we are cognizant of the difficulties inherent in proving,
11 or disproving, sexual harassment charges, particularly in circumstances such as the ones presented
12 here, where no one else witnessed or heard the disputed incident. Both the alleged victim and the
13 alleged harasser bear the burden of proving, with little or no corroboration, that the incident did or
14 did not occur.

15
16 4.8 We conclude that Respondent has proven by a preponderance of the evidence that
17 Appellant's behavior created an intimidating, hostile and offensive working environment for Susan
18 Lee, Gail Colburn, Carla Skog, Louise Bardy and Karen Klocke.

19
20 4.9 Respondent provided sufficient and credible evidence to establish that Appellant engaged in
21 inappropriate and unwelcome conduct and subjected his coworkers to inappropriate displays of
22 anger. Appellant had a duty to be respectful toward his coworkers and to conduct himself in a
23 professional manner. Respondent has shown by a preponderance of the credible evidence that
24 Appellant's actions constituted neglect of duty and willful violation of agency rules and regulations
25 and that his actions rose to the level of gross misconduct. Appellant's friendship with Ms. Lee and
26 the fact that Ms. Skog advised Appellant not to touch her again does not mitigate Appellant's

1 behavior towards them. Furthermore, Respondent has proven by a preponderance of the evidence
2 that Appellant's misconduct and outbursts of anger also interfered with the department's ability to
3 provide a safe and secure environment for its employees.

4
5 4.10 Nothing in the record establishes that the investigation conducted to solicit information
6 regarding the offenses alleged by the complainants was improper or that Mr. Silver relied on
7 inappropriate information in making the decision to terminate Appellant.

8
9 4.11 Under the facts and circumstances of this case, including the seriousness of the offenses, we
10 conclude that Respondent has proven that the sanction of dismissal is appropriate and the appeal
11 should be denied.

12
13 **V. ORDER**

14 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Peter A. Maule is denied.

15
16 DATED this _____ day of _____, 1999.

17
18 WASHINGTON STATE PERSONNEL APPEALS BOARD

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20 _____
Howard N. Jorgenson, Chair

21
22 _____
Walter T. Hubbard, Vice Chair

23
24 _____
Nathan S. Ford Jr., Member